



Georgia Secretary of State
Brian P. Kemp



Georgia Investment Adviser Orientation

by the Staff of the Securities Division
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**THIS PUBLICATION IS NOT LEGAL ADVICE AND MAY NOT BE RELIED UPON AS AUTHORITY
IN ANY LEGAL PROCEEDING.** This publication is not all-inclusive with respect to the
regulation of Georgia Registered Investment Advisers. It is recommended that all Georgia
Registered Investment Advisers review the statutes and rules/regulations that pertain to its
business activities.

Introduction

Congratulations on your recent registration with the Georgia Commissioner of Securities as an Investment Adviser.

You, and your firm, will now be working with the Georgia Secretary of State Securities Division as your state regulator.

The State Securities Division is divided into two offices, Atlanta and Macon.

- The Atlanta office handles Legal, Enforcement, and Audits.
- The Macon office handles Registration and Filings.

Georgia Statutes & Rules

As a Georgia registered investment adviser, you are now subject to the securities laws of the State of Georgia and the rules promulgated by the Securities Commissioner of the State of Georgia.

Georgia Uniform Securities Act of 2008: Title 10, Chapter 5, §1 through §90 of the Official Code of Georgia Annotated (O.C.G.A.).

Rules of the Georgia Commissioner of Securities: The rules relating to investment advisers are located under Chapter 590-4-4.

Investment Adviser (“IA”) Firm’s Registration/Filings

Register electronically with IARD/FINRA.

- Complete ADV/Brochure (*Slide 5*).
- Pay registration fee of \$250.

Registration **expires on December 31st** of each calendar year.

Must renew registration **during the 90 days prior** to the end of calendar year.

- Pay renewal fee of \$100.
- Submit renewals through IARD, with updated ADV.
- FINRA will publish instructions on registration renewal in the Fall prior to expiration.

Failure to renew your registration will result in **termination** of your registration in Georgia.

Rule 590-4-4-.02

Investment Adviser Representatives (“IAR”)

An IAR is any individual employed or associated with an IA who :

- Makes any recommendations or otherwise gives investment advice regarding securities, manages accounts, or portfolios of clients,
- Determines which recommendation or advice regarding securities should be given,
- Provides investment advice or holds him/herself out as providing investment advice,
- Receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, OR
- Supervises employees that perform any of the above.

IAR's must *also individually register* with the State electronically through CRD/FINRA.

- Complete and file Form U4, in accordance with form instructions.
- Have proof of compliance with examination requirements.
- Pay registration fee of \$250.
- Renew annually with the State, electronically, and pay \$100 renewal fee.

IAR's are under a continuing obligation to update information required by Form U4 *as changes occur*, on the CRD system.

- Filings will be considered prompt if filed within 30 days of the event.

Rule 590-4-4-.05

ADV/Brochure

Investment advisers are under a continuing obligation to keep the ADV/Brochure accurate and up-to-date. This is done through the *annual amendment* and *other-than-annual amendment(s)*.

Your ADV must initially be filed for registration and updated within 90 days of the end of your firm's fiscal year.

Your ADV must include Form ADV Part 2 (i.e. Brochure). The Brochure must:

- Be furnished to every advisory client or prospective advisory client;
- **Initial delivery** must be 48 hours prior to entering into contract OR at time entering contract if client has 5 business days to terminate.
- **Annual delivery** must be within 120 days of end of fiscal year.
 - Includes a free, updated brochure, supplements, and a summary of material changes; OR delivery of a summary of material changes that includes an offer to provide a copy of the updated brochure and information on how the client may obtain a copy.
- Must comply with the language, organization format, and filing requirements specified in the Instructions to Form ADV Part 2.

Rule 590-4-4-.16

Advisory Contracts

An investment adviser must have/maintain a written advisory contract for each client that receives discretionary advice.

The contract **must** included the:

- Services to be provided;
- Term of the contract;
- Investment advisory fee;
- Formula for computing the fee;
- Amount of prepaid fee to be returned if terminated or non-performance of contract;
- Any grant of discretionary power.

Additionally, no assignment/transfer of the contract can be made without client consent, and it cannot include any provisions that waive compliance with any acts, laws or rules.

Rule 590-4-4-.17

Books & Records

Maintain

- All books & records required by *SEC Rule 204-2*.
- Firm's trial balances, financial statements, and internal audit papers.
- List of accounts and their funds, securities, and transactions.
- Each IA-client agreement.
- Client communication file.
- Solicitor information (if app.)
- Advertisement file.
- Litigation & Complaint file.
- Written suitability information.
- Compliance & Supervision procedures.
- Registration file.

Preserve/Retain

- All documents in *Maintain Category* for no less than 5 years.
 - First 2 in firm's principal office.
- Be maintained at business location where services are provided.
- IAR's identifying records.
- Firm's Articles of Incorporation, charters, minutes, books, and stock certificates.
- Before ceasing business, an IA must arrange and notify the Securities Division where these documents can be found.

Rule 590-4-4-.14

Examinations/Audits

- Investment advisers are **always** on notice of being audited.
- An exam/audit may commence at any time by the Securities Division, with or without prior notice.
 - Per **O.C.G.A. § 10-5-40(d)**.
- Audits will be either on-site or by telephone, at the discretion of the Securities Division.
- Audits *typically* will include, but are not limited to, examining a firm's books and records, offerings, marketing and business practices.
- **Rule 590-4-4-.14(5)(a)-(h)** lists the fees for these audits.
 - The fee will range from \$150-\$1,000, based on AUM.

O.C.G.A. § 10-5-40(d)

Ethical Standards

Fiduciary Duty

An investment adviser (IA) is a fiduciary, and has a duty to act primarily for the benefit of its clients.

Suitability Grounds

An IA must have reasonable grounds to believe that a recommendation is suitable for the client based upon information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation/needs, etc.

Code of Ethics

An IA must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material non-public information.

Confidentiality

An IA must not disclose the identity, investments, or other financial information of any client or former client unless required by law to do so, or unless consented to by the client.

Proxy Voting

When exercising voting authority on a client's securities, an IA must have written policies and procedures in place to ensure the securities are voted in the best interest of the client and how COI are addressed, disclose to client how to obtain info on how voted, and describe and furnish the policies and procedures to client.

Ethical Standards

Conflicts of Interest (COI)

An IA must disclose, in writing, all material conflicts of interest which could reasonably be expected to impair the rendering of unbiased and objective advice including, but not limited to, compensation arrangements and fees before advice is rendered.

Misrepresentations

An IA must not misrepresent to any client, or prospective client, its qualifications, services being offered, fees charged, or omit to state a material fact to make something not misleading.

3rd Party Recommendations

An IA must not provide a report or recommendation to any client prepared by someone other than the IA, IAR, or federal covered IA without disclosing that fact.

Misleading Solicitation

An IA must not make, in the solicitation of clients, any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which they are made, not misleading.

Indirect Unlawful Conduct

An IA must not engage in any conduct or act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Act or any rule or regulation thereunder.

Prohibited Conduct

Written Approval of Discretionary Authority

An IA must obtain written discretionary authority, at least within ten (10) business days after the first transaction.

Excessive Trading

An IA must not trade excessively in a client's account as compared to its size, resource, objectives and character.

Trading Without Authority

An IA must not place an order to purchase/sell without authority from client.

Trading based on 3rd party

An IA must not place an order to purchase/sell a security in a client account upon instruction from only a third party, without first obtaining third-party trading authorization from the client.

Borrowing or Loaning Client Money

An IA must not loan or borrow money/securities to/from a client.

Unreasonable Fee

An IA must not charge a client an unreasonable fee.

Rule 590-4-4-.19

Prohibited Conduct

Principal Trading

An IA cannot, when acting as principal for its own account, knowingly sell any security to or purchase any security from a client, or while acting as BD for a person other than the client, knowingly affect any sale or purchase of any security for the account of the client without disclosing to the client in writing before the completion of the transaction the capacity in which it is acting and obtaining the consent of the client to the transaction.

Guaranteeing Results

An IA must not guarantee any specific results will be achieved.

Non-Compliant Advertisement(s)

An IA must not publish, circulate, or distribute any advertisement that does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

Fraudulent Activities

An IA must not engage in any act, practice, or course of business that is fraudulent, deceptive, manipulative or unethical.

Employing an Unregistered IAR

An IA must not employ an investment adviser representative who is not registered as required by the Act.

Custody

It is unlawful and deemed to be fraudulent and deceptive for an investment adviser registered with the Commissioner to have custody of client funds or securities **UNLESS** they:

- Notify the Commissioner in writing;
- Maintain the funds/securities with a qualified custodian;
In a separate account for each client, under client's name.
- Promptly notify the client, in writing, of the qualified custodian's info and manner in which funds/securities are maintained;
- Reasonably believe the qualified custodian sends account statements, at least quarterly to the client;
- Have the funds/securities verified by an actual exam/audit annually by an independent-CPA without prior notice or announcement to the IA, that is irregular from year-to-year.

(i.e. Independent Verification & Surprise Examination.)

For Exceptions, see Rule 590-4-4-.20(2)(a)-(e).

Rule 590-4-4-.20

Contact Information

The Securities Division is here to assist you in your business and compliance efforts. *Contact Information:*

- **Atlanta Office**

Securities Division
2 Martin Luther King Jr. Drive, S.E.
Suite 820, West Tower
Atlanta, Georgia 30334
(404) 232-1505 (*ask for Timothy J. Collins*)

- **Macon Office**

Securities Registrations
237 Coliseum Drive
Macon, Georgia 31217-3858
(478) 207-2440